Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-8024 November 29, 1955

EUSEBIO DE LA CRUZ, plaintiff-appellee,
vs.
APOLONIO LEGASPI and CONCORDIA SAMPEROY, defendants-appellants.

Jose A. Fornier for appellants.
Ramon Maza for appellee.

BENGZON, *J.:*

In the Court of First Instance of Antique, in November, 1950, Eusebio de la Cruz sued Apolonio Legaspi and his wife to compel delivery of the parcel of land they had sold to him in December, 1949. The complaint alleged the execution of the contract, the terms thereof, the refusal of defendants to accept payment of the purchse price of P450 which he had tendered, and undue retention of the realty.

The defendants, in their answer, admitted the sale and the price; but they alleged that before the document (of sale) "was made, the plaintiff agreed to pay the defendants the amount of P450 right after the document is executed that very day December 5, 1949, but after the document was signed and ratified by the Notary Public and after the plaintiff has taken the original of the said document, the sad plaintiff refused to pay the sum of P450 which is the purchase price of the said land in question." They asserted that for lack of consideration and for deceit, the document of sald should be annulled.

Plaintiff's next move was a petition for judgment on the pleadings, contending that the allegations of the answer gave the defendants no excuse to retain the property, rejecting the price.

Joining the motion for judgment on the pleadings, the defendants maintained that the sale should be annulled pursuant to their answer's allegatios.

The Honorable F. Imperial Reyes, Judge, rendered judgment (a) ordering plaintiff to pay the price of P450 to defendants: (b) ordering the latter to receive such price and immediately after such receipt, to deliver possession of the property to plaintiff.

Having failed in a motion to reconsider, defendants appealed in due time. The seven errors assigned in their printed brief, assail the correctness of the judgment, maintaining two principal propositions, namely: (1) the trial judge erroneously disregarded their allegations, in their answer, of non-payment of the price, as hereinbefore quoted; (2) such allegations which must be deemed admitted by plaintiff when he moved for judgment on the pleadings — established a good defense, because the contract was without consideration, and was resolved by plaintiff's failure to pay the price "right after the document was executed.

As to the first proposition, the decision does not say so, but there is no reason to doubt that as requested in the plaintiff's motion, His Honor considered the allegations made both in the complaint and in the answer.

However, he found that defendants' allegations constituted no defense. He read the law correctly, as we shall forthwith explain.

On the second proposition, appellants rightly say that the Civil Code — not the New Civil Code — regulates the transaction, which occurred in 1949. Yet they err in the assertion that as plaintiff failed to pay the price after the execution of the document of sale as agreed previously, the contract became null and void for *lack of consideration*. It cannot be denied that when the document was signed the cause or consideration existed: P450. The document specifically said so; and such was undoubtedly the agreement. Subsequent non-payment of the price at the time agreed upon did not convert the contract into one *without* cause or consideration: a *nudum pactum*. (Levy vs. Johnson, 4 Phil. 650; Puato vs. Mendoza, 64 Phil, 457.) The situation was rather one in which

there *is failure to pay* the consideration, with its resultant consequences. In other words, when after the notarization of the contract, plaintiff fialed to hand the money to defendants as he previously promised, there was default on his part at most, and defendants' right was to demand interest — legal interest — for the delay, pursuant to article 1501 (3) of the Civil Code (Villaruel vs. Tan King, 43 Phil. 251), or to demand rescission in court. (Escueta vs. Pardo, 42 Off. Gaz. 2759; Cortes vs. Bibano, 41 Phil. 298.) Such failure, however, did not ipso facto resolve the contract, no stipulation to that effect having been alleged. (Cf. Warner Barnes & Co. vs. Inza, 43 Phil., 505.) Neither was there any agreement nor allegation that payment on time was essential. (Cf. Abella vs. Francisco, 55 Phil., 447; Berg vs. Magdalena Estate, 92 Phil., 110.

Indeed, even if the contract of sale herein question had expressly provided for "automatic rescission upon failure to pay the price," the trial judge could allow plaintiff to enforce the contract, as the judgment does, in effect because defendants had not made a previous demand on him, by suit or notarial act.

> In the sale of real property, even though it may have been stipulated that in default of the price within the time agreed upon, the resolution of the contract shall take place *ipso facto*, the vendee may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time. (Art. 1504 Civil Code.).

By the way, this previous demand, Manresa explains, is a demand for rescission. (Manresa Civil Code, Vol. 10, p. 288, 2d Ed.; Villaruel vs. Tan King, 43 Phil. 251.).

The appealed judgment will therefore be affirmed, with costs against appellants. So ordered.

Paras, C. J., Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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